

# United States Senate

WASHINGTON, DC 20510

COMMITTEES:  
ENERGY AND NATURAL RESOURCES  
INTELLIGENCE  
JOINT ECONOMIC

June 23, 2014

Received & Inspected

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The Honorable Thomas Wheeler  
Chairman  
Federal Communications Commission  
445 12th Street, SW  
Washington, DC 20554

JUN 30 2014  
FCC Mail Room

Dear Chairman Wheeler:

I am writing to respectfully request the Federal Communications Commission (FCC) to promptly begin a series of field hearings across the country to hear from communities and businesses who could be most affected by the FCC's Notice of Proposed Rulemaking (NPRM) for new Open Internet rules, and to hold one of those hearings in New Mexico. I'm pleased you've already announced your plan to visit New Mexico later this month to participate in a panel discussion which includes conversations on net neutrality, telehealth, and rural broadband access. These types of discussions and field hearings across the country are essential to promote open dialogues with the public.

I have heard serious concerns from my constituents across New Mexico that proposed rules to include a "fast lane" for online content delivery could undermine the very principles of an open Internet. It is important that access to internet platforms remains open, fair, and equal for all. New Mexico's burgeoning technology corridor deserves to compete on a level playing field that fosters innovation and encourages companies to grow. If businesses have to spend their valuable capital on prioritized access, it could stifle innovation, limit job growth, and discourage employers from investing in their employees.

The proposed rules could leave communities and businesses at a disadvantage. A strong economy requires readily available, high speed access to information technology. Today, many rural, tribal, and low-income areas lack such access leaving them underprepared to compete for high-paying jobs or provide their children with the education they need to compete. In New Mexico, we know these issues all too well; we currently rank as one of the lowest among states with minimally adequate broadband access and adoption.

In light of these issues, I have serious concerns about how states like mine would fare under the proposed new rule, which would create a priority lane for broadband service and weaken consumer protections. The FCC needs to establish strong, enforceable rules that ensure free speech and preserve competition. As the Commission gathers input about this proposed rule, I believe public hearings provide an opportunity for everyone, including our most underserved communities, to voice their input directly to the Commission.

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I appreciate your consideration of this request. Please do not hesitate to contact me if I can assist you on this matter.

Sincerely,

A handwritten signature in blue ink, appearing to read 'M. Heinrich', with a long horizontal flourish extending to the right.

MARTIN HEINRICH  
United States Senator





FEDERAL COMMUNICATIONS COMMISSION  
WASHINGTON

OFFICE OF  
THE CHAIRMAN

July 16, 2014

The Honorable Martin Heinrich  
United States Senate  
702 Hart Senate Office Building  
Washington, D.C. 20510

Dear Senator Heinrich:

Thank you for writing to express your concerns regarding the need to reinstate rules to preserve an open Internet for all Americans as well as your request for a series of field hearings on the proposed rules.

I share your sense of urgency on the open Internet. For this reason, I moved with dispatch to initiate a proceeding to consider new open Internet rules to replace those that were vacated by the D.C. Circuit Court of Appeals in the *Verizon* case. As you know, the *Notice of Proposed Rulemaking* ("Notice") adopted by the Commission in May 2014, begins that process. Therein, we ask a number of questions about the rules we need to adopt, as well as the appropriate legal foundation for such rules. Your letter touches on some of the most important issues presented in the *Notice*, and I will ensure that it is included in the record of the proceeding and considered as part of the Commission's review.

The Commission has struggled for over a decade with how best to protect and promote an open Internet. While there has been bipartisan consensus, starting under the Bush Administration with Chairman Powell, on the importance of an open Internet to economic growth, investment, and innovation, we find ourselves today faced with the worst case scenario: we have no Open Internet rules in place to stop broadband providers from limiting Internet openness. The *status quo* is unacceptable. The Commission has already found, and the court has agreed, that broadband providers have economic incentives and technological tools to engage in behavior that can limit Internet openness and harm consumers and competition. As such, the Commission must craft meaningful rules to protect the open Internet, and it must do so promptly. I can assure you that I will utilize the best tools available to me to ensure the Commission adopts effective and resilient open Internet rules. Unless and until the Commission adopts new rules, broadband providers will be free to block, degrade, or otherwise disadvantage innovative services on the Internet without threat of sanction by the FCC.

With respect to the legal foundation of the rules, I believe that the Section 706 framework set forth by the court provides us with the tools we need to adopt and implement robust and enforceable Open Internet rules. Nevertheless, as you specifically urge in your letter, the Commission is also seriously considering moving forward to adopt rules using Title II of the Communications Act as the foundation for our legal authority. The *Notice* seeks comment on the

benefits of both Section 706 and Title II, including the benefits of one approach over the other, to ensure the Internet remains an open platform for innovation and expression.

With respect to the substance of the rules, the proposals and questions in the *Notice* are designed to elicit a record that will give us a foundation to adopt strong, enforceable rules to protect the open Internet and prevent broadband providers from harming consumers or competition. I am especially sensitive to your concerns about paid prioritization arrangements, and the potential such arrangements have for creating an Internet that is fast for a few, and slow for everyone else. Let me be crystal clear: there must only be one Internet. It must be fast, robust, and open for everyone. The *Notice* addresses this issue head-on, even asking if paid prioritization should be banned outright. It also proposes clear rules of the road and aggressive enforcement to prevent unfair treatment of consumers, edge providers, and innovators. Small companies and startups must be able to reach consumers with their innovative products and services, and they must be protected against harmful conduct by broadband providers.

The *Notice* includes a number of proposals designed to empower consumers and small businesses who may find themselves subject to harmful behavior by a broadband provider. For example, the Court of Appeals did uphold our existing transparency rule, and the *Notice* proposes to strengthen that rule to require that networks disclose *any* practices that could change a consumer's or a content provider's relationship with the network. The *Notice* proposes the creation of an ombudsperson to serve as a watchdog and advocate for start-ups, small businesses, and consumers. And the *Notice* seeks comment on how to ensure that all parties, and especially small businesses and start-ups, have effective access to the Commission's dispute resolution and enforcement processes.

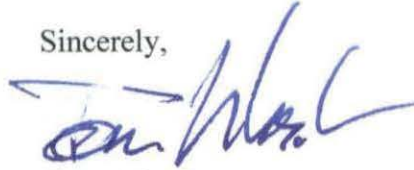
This *Notice* is the first step in the process, and I look forward to comments from all interested stakeholders, including members of the general public, as we develop a fulsome record on the many questions raised in the *Notice*. I am actively listening to the public and stakeholders who are interested in sharing viewpoints on this issue in public and private forums both in Washington, D.C., and across the country. As you know, I recently visited New Mexico to participate in a public forum where questions and concerns about the need for an open Internet played a prominent role. I held on-the-record meetings with venture capitalists, start-up companies, and public interest groups last month in Northern California, and I am holding another series of meetings next week in New York City. My staff and I are in the midst of planning other events at which there will be ample opportunity for public input and dialogue.

Moreover, in an effort to maximize public participation in this proceeding, we have established an Open Internet email address – [openinternet@fcc.gov](mailto:openinternet@fcc.gov) – to ensure that Americans who may not otherwise have the opportunity to participate in an FCC proceeding can make their voices heard. In addition, to ensure sufficient opportunity for broad public comment, we have provided a lengthy comment and reply period through September 10, 2014, that will allow everyone an opportunity to participate.

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Again, I appreciate your deep interest in this matter and look forward to continued engagement with you as the proceeding moves forward.

Sincerely,

A handwritten signature in blue ink, appearing to read "Tom Wheeler", with a stylized flourish extending from the end.

Tom Wheeler